



CONTRACTOR QUALIFICATION POLICY AND PROCEDURE FOR ON-SITE PUBLIC WORKS PROJECTS

I. POLICY STATEMENT

Pursuant to the requirements of NRS Chapter 338, the City of Las Vegas is required to award a publicly bid contract for the construction of a public work project to the lowest responsive and responsible bidder. In the past, the City was required to determine the responsibility of the bidder at the time of the award on a project-by-project basis. However, with the enactment of NRS Sections 338.1377 through 338.139, inclusive, the City is authorized to certify in advance that a general contractor is a responsible bidder who is authorized to bid on the public works projects designated by the City. The certification may be effective for a specific project only or for a period of 12 months or 24 months from the date of the certification, whichever is selected by the City.

The City intends with the adoption of this Qualification Policy and Procedure to implement a procedure for determining if a general contractor is qualified under the criteria established herein to bid on the public work projects designated by the City. Such certification shall be effective for a period of 24 months and apply only for the on-site public works projects that exceed \$100,000 in the estimated cost of construction. On-site public work projects include buildings, parks, and other non-right-of-way construction projects. Roadway, flood control, traffic control and other similar public work projects shall be excluded. If a federally funded project prohibits such qualification, it shall also be excluded.

The City's intent in adopting this Policy and Procedure is as follows:

1. To ensure the public works projects of the City are constructed by general contractors who have been determined to be responsible pursuant to the criteria set forth herein.
2. To reduce the time and effort on the part of the City in determining whether or not a bidder is responsible subsequent to the bid opening by eliminating the need to review in detail the qualifications of a general contractor prior to the award a contract.
3. To save the time, effort and expense normally incurred in preparing a bid for submission to the City since the general contractor will be aware prior to such preparation whether or not the general contractor is qualified to bid on certain public work projects of the City.

The qualification of any contractor pursuant to this Qualification Policy and Procedure shall not preclude the City, on a project-by-project basis, from considering at the time of the proposed award of a contract any new information that reflects upon the responsibility of a previously qualified general contractor. Notwithstanding any certification of a general contractor under any previously adopted policy and procedure, each general contractor desiring to bid on the on-site

public work projects of the City is required to re-qualify under this Qualification Policy and Procedure.

II. QUALIFICATION PROCEDURE

- A. Purpose.** To establish a procedure (the “Qualification Procedure”) for (i) determining whether or not a general contractor is qualified for a period of 24 months to bid on certain public work projects of the City, and (ii) disqualifying a general contractor previously qualified by the City to bid on such projects.
- B. Scope.** The Qualification Procedure applies only to general contractors interested in bidding on the on-site public work construction projects of the City of Las Vegas that exceed \$100,000 in the estimated cost of construction. An on-site public work project includes any building, park, or other non-right-of-way construction project, but excludes off-site improvements such as right-of-way, flood control, traffic control and other similar projects. If a Federally funded project prohibits such qualification, it shall also be excluded.
- C. Filing of Application.** Any person (the “Applicant”) who wishes to qualify as a bidder for on-site public work construction projects with the City must submit an application to the Manager of the Purchasing and Contracts Division of the Department of Finance and Business Services. A copy of the Application is attached hereto as Attachment 1 and incorporated herein as a part hereof.

Each Applicant must submit an application no later than 3:00 p.m. on the first Friday of each odd numbered month beginning September 5, 2003.

- D. Criteria for Evaluating Applicants.** In determining whether the general contractor is qualified to bid on the on-site public work projects of the City, each Applicant will be evaluated based upon the information provided in the Application. As part of the application, the Applicant will be required to provide the following information:
 - 1. Whether the Applicant possesses a valid contractor’s license of a class corresponding to the work to be required by the City;
 - 2. Whether the Applicant has the ability to obtain the necessary bonding for the work to be required by the City;
 - 3. Whether the Applicant has successfully completed one or more projects during the five (5) years immediately preceding the date of submission of the application which is of similar size, scope or type as the work to be required by the City;
 - 4. Whether the principal personnel employed by the Applicant have the necessary professional qualifications and experience for the work to be required by the City;

5. Whether the Applicant has breached any contracts with a public agency or person in this state or any other state during the five (5) years immediately preceding the date of submission of the application;
6. Whether the Applicant has been disqualified from being awarded a contract pursuant to NRS 338.017 or 338.138;
7. Whether the Applicant has been convicted of a violation for discrimination in employment during the two (2) years immediately preceding the date of submission of the application;
8. Whether the Applicant has the ability to obtain and maintain insurance coverage for public liability and property damage within limits sufficient to protect the Applicant and all the subcontractors of the Applicant from claims for personal injury, accidental death and damage to property that may arise in connection with the work to be required by the City;
9. Whether the Applicant has established a safety program that complies with the requirements of Chapter 618 of NRS;
10. Whether the Applicant has been disciplined or fined by the State Contractors' Board or another state or federal agency for conduct that relates to the ability of the Applicant to perform the work to be required by the City;
11. Whether, during the five (5) years immediately preceding the date of submission of the application the Applicant has filed as a debtor under the provisions of the United States Bankruptcy Code;
12. Whether, during the five (5) years immediately preceding the date of submission of the application, the Applicant has, as a result of causes within the control of the Applicant or a subcontractor or supplier of the Applicant, failed to perform any contract:
 - a. In the manner specified by the contract and any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative;
 - b. Within the time specified by the contract unless extended by the person or governmental entity that awarded the contract or its authorized representative; or
 - c. For the amount of money specified in the contract or as modified by any change orders initiated or approved by the person or governmental entity that awarded the contract or its authorized representative.

Evidence of any failure described in this subsection may include, without limitation, the assessment of liquidated damages against the Applicant, the forfeiture of any bonds posted

by the Applicant, or an arbitration award or decision by a court of competent jurisdiction law against the Applicant.

Only the criteria set forth above will be used in determining whether or not to approve the Applicant.

- E. Investigation of Application.** Upon receipt of an application, the staff of the Purchasing and Contracts Division and the Department of Public Works shall investigate for the purpose of determining if the Applicant is qualified to bid on a contract and, after conducting the investigation, make a recommendation in connection therewith which is to be forwarded to the City Council for final determination. The City Council determination shall be made within 45 days after receipt of the application.

The Purchasing & Contracts Division staff will verify the information provided by the Applicant as part of the application. As part of the verification process, the City may request information regarding judgments, liens and violations of applicable local, state and federal law from the following private organizations and governmental entities:

- a. Nevada State Contractors Board
- b. Nevada State Public Works Board
- c. Nevada Office of the Labor Commissioner
- d. Nevada Equal Rights Commission
- e. Nevada Division of Industrial Relations
- f. Other applicable governmental agencies
- g. Associated General Contractors
- h. Associated Builders & Contractors
- i. Southwest Regional Council of Carpenters
- j. Southern Nevada Building & Construction Trades Council
- k. Laborers' Union Local #872

Failure to provide complete and truthful information shall be grounds for denial of the application.

As required pursuant to NRS 338.1379(7), any financial information and other data pertaining to the net worth of an Applicant which is gathered by or provided to the City to determine the financial ability of the Applicant to perform a contract is confidential and not open to public inspection.

- F. Decision on Application.** The Manager of the Purchasing and Contracts Division will notify the Applicant in writing of staff's proposed recommendation to the City Council regarding the application. If staff recommends denial of the application, the written notice will set forth the reasons therefor and inform the Applicant of the right to appeal the recommendation. The notification shall include the City Council date for which the agenda item will be heard.

- G. Effect of Decision.** The City will accept bids only from an Applicant whose application has been approved pursuant to the Qualification Procedure. If an application is denied and the decision is not appealed, or the appeal upholds the decision to deny the application, the Applicant shall not be able to bid on any on-site public work projects of the City until a new application is submitted and approved by the City. An Applicant whose application has been denied may not submit a new application for a period of two years.

If an application is approved, the Applicant may bid on all on-site public work projects that are within the scope of the Applicant's license for a period of two years at which time the Applicant will be required to submit a new application for review and approval by the City.

The decision approving an application shall not preclude the City Council from considering on a project by project basis any new information pertaining to the criteria set forth in Section D above which reflects upon the qualification of an Applicant and which may be a basis for denying the award of a contract to the Applicant.

- H. Right of Appeal.** If, within 10 days after receipt of the notice that the City Council has denied the application, the Applicant files a written request for a hearing, the matter shall be set for hearing before the City Council within 10 days after receipt of the request. The hearing must be held not later than 20 days after the receipt of the written request. At such hearing, the Applicant shall have the burden of proving by substantial evidence that the Applicant is qualified to bid on the on-site public work projects of the City.

The hearing must be held at a time and place prescribed by the City Council. At least 10 days before the date set for the hearing, the City Council shall serve the Applicant with written notice of the hearing. The notice may be served by personal delivery to the Applicant or by certified mail to the last known business or residential address of the Applicant.

The City Council shall render a decision on the matter within 5 days after the hearing. The Applicant shall be notified in writing of the decision within 5 days after it is issued. The decision of the City Council is a final decision for purposes of judicial review.

- I. Disqualification of Previously Qualified Applicant.** If subsequent to approval of an Applicant to bid on the on-site public work projects of the City, any information received which evidences that the Applicant's qualification status should be reconsidered, the staff designated from the Purchasing and Contracts Division and Department of Public Works shall conduct such a review. The review will analyze the Applicant's eligibility pursuant to the criteria established in NRS 338.1377 and, if necessary, request additional information from the private organization and governmental entities listed in Section E above.

Any Applicant disqualified pursuant to the provision of this Section shall remain disqualified for the remainder of the Applicant's two-year certification period or 12 months, whichever is greater.